

Beer Businesses Strike State Law Showing it Unconstitutionally Interferes with Their Commercial Free Speech Rights



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The Eighth Circuit Court of Appeals recently upheld a District Court's decision to strike down a state law that placed severe restrictions on alcohol advertising. For example, under the law, Joe's Bar could run the ad, "Drink Coors Light, now available at Joe's Bar," but a beer producer or beer distributor could not. Broadcasters and businesses waged a legal battle twice reaching the Eighth Circuit as it stretched nearly a decade, but in the end they successfully defeated the state's enactment and application of this unconstitutional law.

Takeaways:

Businesses can challenge unconstitutional laws. It is accepted as universal that all citizens have constitutional rights. Perhaps less ubiquitous, but no less important, is the notion that businesses have them too. As this case shows, businesses, or an association of them, can rise up and strike laws that interfere with their constitutional rights. States can legislate and regulate, of course, but they must not run afoul of the constitution in doing so. State governments can be mistaken in many ways, such as violating the [dormant commerce clause on which we've previously written](#), or as illustrated in this case, treading on the sacrosanctity of free speech.

The First Amendment protects commercial speech. Commercial speech is less protected than other types of speech, but it "is still protected from unwarranted government regulation." The law here failed the requirement that it be "no more extensive than necessary to further the government's interest," and also the state failed to show that the law "directly advances the government's interest." These two prongs of the analysis are part of the four part test applied by the Eighth Circuit.

Just because other states impose similar laws does not mean the laws are constitutional. One of the arguments asserted by the state was a more lawyerly sounding version of the old justification "but everyone's doing it." The Eighth Circuit flatly rejected this, concluding that the fact that other states and the federal government have similar laws, does not make this particular version of the law constitutional. This was in part because the challenge here was also brought as an "as applied" challenge, alleging that this particular application of the statute was problematic. The Eighth Circuit agreed, scolding the state's application of the statute as "so pierced by exemptions and inconsistencies that they render the Statute as applied irrational and ineffective." A win for businesses and advertisers alike, such a strong rebuke of government red tape no doubt came as sweet victory to these dedicated litigants fighting for their commercial free speech.

Case reference: *Missouri Broadcasters Ass'n v. Schmitt*, No. 18-2611 (8th Cir. Jan. 8, 2020).